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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,513	04/01/2004	E. James Arking	IK-120(US)	8227
7590 05/21/2008 KELLEY DRYE & WARREN LLP 400 ATLANTIC STREET, 13TH FLOOR STAMFORD, CT 06901				
EXAMINER				
AKRAM, IMRAN				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
05/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,513

Applicant(s)

ARKING ET AL.

Examiner

Imran Akram

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 8-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I in the reply filed on 11/14/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Response to Arguments

2. Applicant's arguments filed 11/14/07 have been fully considered but they are not persuasive. Applicant's arguments rely solely on the amended claim 1, as it now incorporates the head surface having "a shaft at the back end." As is now recited in the rejections below—necessitated by amendment—both the Farr and Pelecq references disclose a shaft on the back end of the plunger heads.

3. In response to applicant's argument that the references have different utility (as found on pages 9 and 11 of applicant's arguments), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

4. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a non-hollow shaft at the back end) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Farr (US 3,355,098).

7. Regarding claim 1, Farr discloses a fractionator having a head surface at a forward end of the head and a shaft on the back end (see figure 1), the head being configured to form a slideable seal with the inside surface of a sample tube (see column 1, lines 61-65); a collection port disposed forward of the head surface (see column 1, lines 67-70); and a fluid passageway being configured and arranged to allow fluid transport from the sample tube to sample receptacles (see column 2, lines 10-13 and 25-26).

8. Regarding claim 5, Farr discloses a fractionator wherein the collection port is placed off-center of the head (see **16**, Figure 1).

9. Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Pelecq (FR 2537092).

10. Regarding claim 1, Pelecq discloses a device having a head with head surface at the forward end of the head and a shaft on the back end (see figure 2), the head being configured to form a slideable seal with the inside surface of a sample tube, a collection port disposed forward of the head surface, and a fluid passageway in fluid communication with the collection port ("sealing stopper having a pouring spout for the distribution on demand of liquid held in a necked container and propelled out of the container by the intermediary of a gas...incorporated in the interior of the container, this stopper being characterized by the fact that it has a body integral with a plunger tube," page 3, lines 6-11 of translation).

11. Regarding claim 2, Pelecq discloses a head surface positioned inside the sample tube and a plenum space bounded by the head surface, the collection port, and the inner surface of the tube ("sealing stopper having a pouring spout for the distribution on demand of liquid held in a necked container and propelled out of the container by the intermediary of a gas...incorporated in the interior of the container, this stopper being characterized by the fact that it has a body integral with a plunger tube," page 3, lines 6-11 of translation).

12. Regarding claim 6, Pelecq discloses a collection port placed at the center of the head (see Figure 2).

13. Regarding claim 7, Pelecq discloses a collection port configured to isolate the head surface from a sample during collection of the sample from the sample tube (see Figure 3).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

17. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelecq (FR 2537092).

18. Regarding claim 3, Pelecq does not disclose the ratio of the cross-sections but does disclose varying dimensions and diameters of the collection port and collection tube. It would have been obvious to one having ordinary skill in the art at the time the invention was to vary cross-sections and diameters to allow for varying flow rates and volumes.

19. Regarding claim 4, Pelecq discloses varying dimensions and diameters of the collection port and collection tube. It would have been obvious to one having ordinary skill in the art at the time the invention was to vary cross-sections and diameters to allow for varying flow rates and volumes.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Imran Akram whose telephone number is 571-270-3241. The examiner can normally be reached on 10-7 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexa Neckel can be reached on 571-272-1446. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

IA

/PATRICK RYAN/
Supervisory Patent Examiner, Art Unit 1795